

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MYRA ARAGON,

Plaintiff,

v.

No. 14cv290 MV/LAM

DE BACA COUNTY SHERIFF'S DEPARTMENT *et al.*,

Defendants.

**MEMORANDUM OPINION AND ORDER GRANTING
MOTION TO PROCEED IN FORMA PAUPERIS**

THIS MATTER comes before the Court on Plaintiff's First Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 3, filed March 26, 2014), and on Plaintiff's Second Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 5, filed April 21, 2014). For the reasons stated below, the Court will **GRANT** Plaintiff's Second Application (Doc. 5) and **DENY** Plaintiff's First Application (Doc. 3) as moot.

Plaintiff filed her First Application to Proceed in District Court without Prepaying Fees or Costs using the wrong application form. (Doc. 3). The Court ordered her to cure the deficiency by filing the correct application form. (Doc. 4, filed April 9, 2014). Plaintiff then filed her Second Application to Proceed in District Court without Prepaying Fees or Costs using the correct application form. (Doc. 5).

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962).

The Court will grant Plaintiff's Second Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. 5). Plaintiff signed an affidavit in support of her application in which she declares that she is unable to pay the costs of these proceedings and declares under penalty of perjury that the information regarding her income is true. Plaintiff's application shows that her total monthly expenses, \$522.00, exceed her total monthly income, \$497.00, and that she has no assets. Because it is granting Plaintiff's Second Application, the Court will deny Plaintiff's First Application (Doc. 3) as moot.

"When a plaintiff is granted in forma pauperis status, the district court is required to serve process for the plaintiff." *Olsen v. Mapes*, 333 f.3d 1199, 1204 (10th Cir. 2003) (*quoting* 28 U.S.C. § 1915(d) ("The officers of the court *shall* issue and serve all process, and perform all duties in [in forma pauperis] cases") (*emphasis added*)). Because Plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915, the Court will order the Clerk of the Court to notify Defendants that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d). If Defendants do not return the waiver within 45 days after the request is sent, then the United States Marshal shall serve a copy of the Summons and Complaint on Defendants at the address provided by Plaintiff in her complaint (Doc. 1).

IT IS THEREFORE ORDERED that Plaintiff's Second Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 5, filed April 21, 2014) is **GRANTED** and

Plaintiff's First Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 3, filed March 26, 2014) is **DENIED as moot.**

IT IS ALSO ORDERED that the Clerk of the Court notify Defendants that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d). If Defendants do not return the waiver within 45 days after the request is sent, then the United States Marshal shall serve a copy of the Summons and Complaint on Defendants at the address provided by Plaintiff in her complaint (Doc. 1).



UNITED STATES DISTRICT JUDGE